

REMARKS/ARGUMENTS

Claims 20-27 and 29 are pending in the present application. Claims 30 and 31 are newly added. No new matter has been entered by the present amendment.

Claim Rejections Under 35 U.S.C. § 102

Claim 29 is rejected under 35 U.S.C. 102(b) as being anticipated by Jackson (U.S. Patent 5,668,011). This rejection is rendered moot by the cancellation of claim 29.

The Examiner further rejected all the pending claims, i.e. claims 20-27 and 29 under 35 U.S.C. 102(a) as being anticipated by Inoue et al (EP 1136563 A2). As admitted by the Examiner, the foreign priority date of the present application, November 1, 2000 is prior to the publication date of Inoue. The English translation of the foreign priority patent application, JP 2000-334641 filed on November 1, 2000, is provided to the Patent Office with the present amendment. Accordingly, the Inoue reference is not prior art to the present application, and it is respectfully requested that the Examiner withdraw the rejection of claims 20-27 and 29 under 35 U.S.C. 102(a) as being anticipated by Inoue.

Claim Rejections Under 35 U.S.C. § 103

The Examiner further rejected claims 20-24, 26, 27 and 29, i.e. all the pending claims except claim 25, under 35 U.S.C. 103(a) as being unpatentable over Mizukami et al. (EP 0882983 A2) in view of Kohnert et al. (U.S. Patent. 5,366,730).

Mizukami discloses a reagent comprising a polymethine dye for the classification and counting of leukocytes. Mizukami does not suggests or disclose the use of this reagent to stain

bacteria. Further, as noted by the Examiner, the disclosed reagent is incapable of reducing nitrite ions as recited in the pending claims of the present application.

Kohnert discloses a pharmaceutical preparation of a protein with t-PA activity. Kohnert, likewise, does not disclose the use of such a preparation to stain bacteria. Further, the Kohnert does not teach that the preparation is capable of reducing nitrite ions.

The Mizukami and Kohnert references are directed to separate fields of technology that are different from the present invention, and one of ordinary skill would not look to the work in counting leukocytes and pharmaceutical preparations to develop a reagent to stain bacteria. Accordingly, there is no basis to combine the teachings of Mizukami and Kohnert.

It is respectfully requested that the Examiner withdraw the rejections of claims 20-24, 26, 27 and 29 under 35 U.S.C. 103(a).

Elections/Restrictions

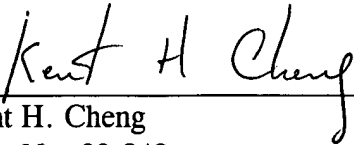
The Examiner notes that the composition comprising a polymethine dye, sulfamic acid as a nitrite reducer, and a buffer for maintaining an acidic pH is considered free of the prior art. Newly added claim 31 is specifically directed to such a composition. It is respectfully requested that claim 31 be allowed.

New claim 30 recites a "buffer for maintaining a pH of 2.0-3.0." The cited prior art, and specifically Mizukami, does not teach the use of a buffer in this recited pH range. Accordingly, it is respectfully requested that claim 30 be allowed.

Accordingly, it is respectfully submitted that the presently pending claims 20-27, 30 and 31 are in a condition for allowance, early notice of which is earnestly requested.

It is believed that no fees or charges are required at this time in connection with the present application; however, if any fees or charges are required at this time, they may be charged to our Patent and Trademark Office Deposit Account No. 03-2412.

Respectfully submitted,
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